

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

No. 88939-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
This 12th day of May 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On April 2, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On April 8, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

The issue in this matter can be resolved by analyzing the Blue Care Network (BCN) BCN 10 Certificate of Coverage (the certificate), the contract defining the Petitioner's health coverage. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

II
FACTUAL BACKGROUND

On March 20, 2007, the Petitioner had a laryngoscopy with stroboscopy and on June 6, 2007, a colonoscopy. BCN provided coverage but applied a 25% copayment for each service. The laryngoscopy copayment was \$183.25; the colonoscopy copayment was \$398.25. The Petitioner appealed, asking that the copayments be waived.

BCN maintained its determination and issued its final adverse determination letter on March 20, 2008.

III ISSUE

Did BCN properly apply copayments for the Petitioner's laryngoscopy and colonoscopy?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that BCN is wrong in defining her laryngoscopy and colonoscopy procedures as surgery and applying a copayment. She says that she did not have any surgery at the time of the procedures. "A surgery," the Petitioner says, "is defined as a procedure that is performed by a surgeon, in an operating room, with an anesthesiologist present during the procedure. Neither examination I had met any of these conditions." She also provided a letter from the otolaryngologist who performed the laryngoscopy saying that procedure was not surgery.

The Petitioner says that BCN waived the 25% outpatient surgery copayment for a colonoscopy she had in 2004. She also notes that BCN's "Good Health" magazine recommends a colonoscopy as a precancerous "screening." She suggests that if BCN is going to bill diagnostic examinations and screenings with a 25% copayment, it should develop a new category outside of the surgical category.

The Petitioner contends there was no surgery performed and therefore 25% outpatient surgery copayment should be waived.

BCN's Argument

In its March 20, 2008, final adverse determination, BCN provided this explanation for its decision:

Our records indicate that you had two outpatient surgical procedures performed at the XXXXX hospital.... The procedures were a Laryngoscopy and Colonoscopy. Based on your medical records and the

claims submitted by the facility, the procedures are classified as Outpatient Hospital Services and a 25% outpatient surgery copayment applies to all related cost of the procedures.

BCN classified the Petitioner's laryngoscopy and colonoscopy as outpatient surgical procedures. The services were performed at the University of Michigan hospital, which billed for them. Therefore, BCN believes that this section of the certificate (page 3) applies:

1.04 Outpatient Hospital Services

Outpatient services are covered when they are medically necessary and preauthorized by your Primary Care Physician and BCN.

Copayment:

- Outpatient surgery: 25% of hospital-billed fees (applies to your hospital copay maximum)
- Non-surgical services: \$10 (**does not** apply to hospital copay maximum)

NOTE: There is no copay for lab, X-rays or pathology. (See Section 1.01)

BCN maintains that the application of a 25% copayment for each procedure was appropriate.

Commissioner's Review

The outpatient procedures the Petitioner had on March 20 and June 6, 2007, were performed at and billed by a hospital (the XXXXX Hospital). If the 25% copayment in section 1.04 of the certificate is to apply, the only question is whether the procedures were "surgery."

The Petitioner argues that she did not have any surgery and therefore should not have to pay the outpatient surgery copayment. She says the laryngoscopy (CPT code 31579) was an examination; there was no biopsy, removal, repair, or injection. She also says the colonoscopy (CPT code 45378) was not surgery – there was also no biopsy, removal of a foreign object, injection, etc.

BCN processed both procedures as surgery under the outpatient hospital services provisions of the certificate. In doing so, BCN followed the classifications established by the

American Medical Association (AMA). The AMA's 2007 *Current Procedural Terminology* places procedures 31579 and 45378 in the surgery section of the manual. Both the laryngoscopy and colonoscopy are invasive procedures and within the definition of surgery as "a branch of medicine concerned with diseases and conditions requiring or amenable to operative or manual procedures."¹

The Commissioner finds that BCN's application of the 25% copayment for the procedures and related charges was appropriate for the outpatient hospital services performed on March 20 and June 6, 2007.

V ORDER

The Commissioner upholds BCN's March 20, 2008, final adverse determination in Petitioner's case. BCN appropriately applied the 25% copayment for the services provided on March 20 and June 6, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner

¹ <http://www2.merriam-webster.com/cgi-bin/mwmednrm?book=Medical&va=surgery>